

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
ALINA M. SHELL, Nevada Bar No. 11711
MCLEATCHIE LAW
701 East Bridger Avenue, Suite 520
Las Vegas, NV 89101
Telephone: (702) 728-5300
Email: maggie@nvlitigation.com
Counsel for Plaintiff Mary Benson

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MARY BENSON, an individual,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, in its official capacity; and
BRET EMPEY, in his official capacity as a
Sergeant of the Las Vegas Metropolitan
Police Department, and as an individual,

Defendants.

Case. No.: 2:19-cv-01949-RFB-VCF

FIRST AMENDED COMPLAINT

[JURY TRIAL DEMANDED]

**(Exemption From Arbitration Based
on Amount Sought, Public Policy
(Federal Statute), and Injunctive
Relief Sought)**

Plaintiff Mary Benson, by and through her counsel of record, hereby files this First Amended Complaint for damages pursuant to 42 U.S.C. § 2000e to 2000e-17 (employment discrimination based on race, religion and/or gender), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1367(a) (supplemental jurisdiction), and 28 U.S.C. § 2201 (creation of remedy).

NATURE OF THE ACTION

Plaintiff Mary Benson was first hired as a Law Enforcement Support Technician with the Las Vegas Metropolitan Police Department in 1996 and was an exemplary employee for over two decades. Beginning in 2016, Ms. Benson was subjected to pervasive and repeated harassment by her supervisor, Sergeant Bret Empey. On multiple occasions at work, Sgt. Empey made unwanted advances toward Ms. Benson, and made vulgar, demeaning, misogynistic and objectifying remarks to Ms. Benson. On occasion, the harassment would turn physical, as Sgt. Empey would invade Ms. Benson's personal space and exhibit erratic

1 and threatening behaviors that made Ms. Benson fear for her safety at work. Furthermore,
 2 Ms. Benson was discriminated against based on her religion, and retaliated against when she
 3 served as an employee witness in various investigations into Sgt. Empey's conduct.

4 As a result of the hostile working environment created by her employer and her
 5 supervisor, Ms. Benson suffered extreme emotional distress. Eventually, Ms. Benson was
 6 forced out of her position, suffering not only the economic damages of losing her livelihood,
 7 but also losing benefits (such as health insurance and increased pension) that she would have
 8 been eligible for had she not been constructively discharged.

9 Both federal and state law mandate that employers maintain a safe work
 10 environment free of discrimination and harassment. Metro failed to do so in this instance,
 11 allowing a sergeant to humiliate and degrade his only female, non-Mormon employee, then
 12 retaliating against her when she stood up for herself. Now, Ms. Benson files the instant
 13 complaint to seek redress.

14 **JURISDICTION AND VENUE**

15 1. In filing this civil action, Ms. Benson seeks damages and injunctive relief
 16 under state and federal anti-discrimination statutes.

17 2. Ms. Benson is a resident of Clark County, Nevada, and asserts statutory
 18 claims arising under Nevada anti-discrimination statutes, Nev. Rev. Stat. § 613.330 *et seq.*,
 19 and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended ("Title
 20 VII").

21 3. Ms. Benson seeks injunctive and declaratory relief, damages, and other
 22 appropriate legal and equitable remedies pursuant to Nev. Rev. Stat. § 613.330 *et seq.*, and
 23 Title VII.

24 4. Jurisdiction is proper in this case pursuant to Nev. Rev. Stat. § 14.065.

25 5. Because Defendants are not arms of the State, this suit is not barred by the
 26 Eleventh Amendment to the United States Constitution. *See Eason v. Clark County Cty. Sch.*
 27 *Dist.*, 303 F.3d 1137, 1147 (9th Cir. 2002); *Culinary Workers Union v. Del Papa*, 200 F.3d
 28 614, 619 (9th Cir. 1999).

CONDITIONS PRECEDENT TO SUE UNDER TITLE VII AND NEV. REV. STAT.

§ 613.330

6. In or around January 2018, Ms. Benson completed an intake form with the Nevada Equal Rights Commission (“NERC”).

7. On or around February 4, 2018, Ms. Benson completed an intake inquiry form with the United States Equal Opportunity Commission (“EEOC”).

8. On May 17, 2018 Ms. Benson digitally signed an EEOC charge alleging discrimination based on sex and religion, as well as retaliation.

9. On March 29, 2019, the EEOC issued Ms. Benson a notice of her right to file suit, indicating that she had fulfilled the administrative requirements and waited the appropriate amount of time before filing suit.

10. This lawsuit has been filed within the ninety (90) days after Ms. Benson received the aforementioned EEOC notice of her right to sue.

11. Thus, Ms. Benson has properly exhausted her administrative remedies and is entitled to file this suit under Title VII and Nev. Rev. Stat. § 613.330.

PARTIES

12. During all relevant times herein, Plaintiff Mary Benson (“Ms. Benson”) was and is a resident of Clark County, Nevada.

13. Defendant Las Vegas Metropolitan Police Department (“Metro”) is the law enforcement agency for Clark County and the City of Las Vegas. Defendant Metro is sued in its official capacity.

14. Metro qualifies as an “employer” subject to Title VII and Nev. Rev. Stat. § 613.310 *et seq.* Upon information and belief, Metro employs more than 5,000 individuals.

15. At all relevant times herein, Ms. Benson was employed by Metro as a Law Enforcement Support Technician (“LEST”) assigned to Northeast 51, Overton Substation.

16. Defendant Bret Empey (“Sgt. Empey”) is a sergeant with the Las Vegas Metropolitan Police Department, and at all relevant times herein was assigned to Northeast 51, Overton Substation.

STANDING

19. An actual case and controversy exists between Ms. Benson and Defendants concerning their respective rights, privileges, and obligations.

Plaintiff Mary Benson

The Overton Substation

22. Generally, all employees at the Substation are and have been members of the Church of Jesus Christ of Latter-day Saints (“LDS” or “Mormon”).

24. At the relevant times herein, Ms. Benson and her husband, Officer Troy Benson (“Officer Benson”), were the only two employees assigned to the Substation who were not LDS.

26. Upon information and belief, several of the officers who are assigned to the Substation, including but not limited to Officer Nathan Boss, Officer Otto Foster, and Officer Corey Estes, are close associates of Sgt. Empey.

4

27. Upon information and belief, Sgt. Empey has used his position of authority at the Substation to bully officers with whom he has had disagreements.

28. Upon information and belief, Sgt. Empey's bullying behavior contributed to several officers leaving the substation, including Officers Allen Johnson, Daniel Swanson, and Jeffrey Hutchinson.

29. Upon information and belief, Sgt. Empey has been the subject of prior internal investigations related to his bullying behavior, including of Officers Allen Johnson and Shanan Kelly.

30. Despite these differences, prior to June 2016, Ms. Benson enjoyed a productive and professional working relationship with Sgt. Empey and the other Metro employees assigned to the Substation.

Ms. Benson's Appearance Changes and Sgt. Empey Takes Notice

31. In 2015 through the beginning of 2016, Ms. Benson lost a significant amount of weight.

32. On or about May 23, 2016, Ms. Benson underwent an abdominoplasty and breast augmentation surgery.

33. Following this surgery, Ms. Benson was on leave pursuant to the Family Medical Leave Act ("FMLA") until returning to work on June 6, 2016.

34. On or about June 7, 2016, as Ms. Benson was walking out of Sgt. Empey's office, he beckoned her back, saying, "wait a minute, come back in here." When Ms. Benson returned, Sgt. Empey looked her up-and-down in a sexual manner and told her something to the effect of, "alright, turn around you can walk back out."

35. Sgt. Empey's remarks implied that he called Ms. Benson back to his office for the sole purpose of leering at her body.

36. The next day, on June 8, 2016, Ms. Benson was in the office conducting fingerprints when Sgt. Empey walked by. Sgt. Empey noticeably did a "double-take," impliedly expressing surprise and attraction at her appearance, before leaving.

///

1 37. Upon his return, Sgt. Empey told Ms. Benson, referring to her weight loss,
2 plastic surgery, and a recent haircut, “I know I don’t have a say in this, but when is enough
3 change gonna be enough for you?”

4 38. On several different occasions starting in June 2016, Sgt. Empey would
5 routinely visit Ms. Benson’s office to talk to her about business, sitting in a chair directly
6 across from her desk. During these visits, Sgt. Empey would tug and grab at his genitals
7 through his pants, rearranging them with full knowledge that Ms. Benson was looking
8 directly at him and was not in a position to avert her eyes from this display.

9 39. On the afternoon of July 18, 2016, Ms. Benson went to Sgt. Empey’s office
10 to tell him that she was leaving briefly because she was (figuratively) starving and had not
11 brought a lunch with her to work. Empey first responded, “Yeah, we know you’re starving,
12 look at you”—a clear reference to Ms. Benson’s recent weight loss. Sgt. Empey then said,
13 “Enjoy the heat.” When Ms. Benson responded that she did not enjoy being hot, Sgt. Empey
14 stated “Yeah, well you should have thought about that before you had all this work done.”

15 40. Sgt. Empey’s unwanted, objectifying behavior and remarks made Ms.
16 Benson extremely uncomfortable and angry.

17 ***Sgt. Empey Repeatedly Makes Offensive Remarks to and About Ms. Benson.***

18 41. On or about June 9, 2016, Sgt. Empey initiated a conversation about sex
19 offenders with Ms. Benson.

20 42. Ms. Benson explained that sex offenders had been coming to the substation
21 complaining that they needed to verify their information quarterly instead of annually.

22 43. Unprovoked, Sgt. Empey said, “I wish they would complain to me, because
23 I would tell them that I’m not the one that stuck my dick where it didn’t belong.”

24 44. This outburst made Ms. Benson uncomfortable and she attempted to change
25 the subject and return the conversation to a more professional tone. However, Sgt. Empey
26 continued, saying, “they’re the ones sticking their dicks where they don’t belong.”

27 45. On or about July 16, 2016, Ms. Benson went to Sgt. Empey’s office to
28 inform him that she was (figuratively) starving and was briefly leaving to grab lunch.

1 46. Sgt. Empey did not confine his comments about Ms. Benson's perceived
2 attractiveness to Ms. Benson. In or around July 2016, Sgt. Empey also commented on Ms.
3 Benson's appearance to her husband, Officer Benson, telling him that "If she gets any hotter,
4 you're out."

5 47. On or about July 27, 2016, Sgt. Empey said to Ms. Benson, in reference to
6 her keeping a space heater underneath her desk, "you lost all that weight and you lost your
7 damn mind."

8 48. In addition to the aforementioned inappropriate comments regarding Ms.
9 Benson's looks, Sgt. Empey would often contrast Ms. Benson with his own wife, whom he
10 would disparage regarding her weight.

11 49. At one point between the end of December 2016 and January 2017, a new
12 officer was to be assigned to the Substation. Sgt. Empey and Ms. Benson engaged in
13 conversation about having "new blood" in the office, and Ms. Benson referenced bullying
14 that had happened at the substation in the past, expressing hope that it would not happen
15 again.

16 50. In response, Sgt. Empey argued that bullying was good and builds character.
17 When Ms. Benson disagreed, noting that it had created issues in the past, Sgt. Empey replied,
18 "I'm not talking about sticking a dick up someone's ass."

19 51. On January 19, 2017, Ms. Benson received her performance report from
20 Sgt. Empey. In this report, Sgt. Empey stated, "This year you achieved some very lofty goals
21 in the area of personal health and fitness. Without putting too fine of a point on it – Way to
22 Go! And keep up the great work."

23 52. This was the first time in her employment with Metro that Ms. Benson
24 received any comment on her physical appearance in her evaluation, as her job does not have
25 any physical requirements. Although this remark was couched as a compliment, Ms. Benson
26 interpreted it as objectifying and degrading, as it was wholly unrelated to her performance as
27 a LEST.

28 ///

53. On or about February 28, 2017, a female civilian came to the substation to request a Battery Domestic Violence (“BDV”) report pertaining to a crime she had been victim of the night before.

54. Sgt. Empey noticed the civilian’s presence at Ms. Benson’s service window—when she left, he asked why she was there.

55. Upon information and belief, Sgt. Empey is a friend of the father of the suspect in the civilian’s aforementioned battery domestic violence case.

56. Ms. Benson responded that she was there to obtain a copy of her BDV report. Sgt. Empey began a misogynistic, victim-blaming tirade against the civilian, saying something to the effect of: “This is the kind of stuff that pisses me off. You have someone out there throwing their snatch around and now claiming they’re a victim.”

57. On or about August 16, 2017, a new Bureau of Land Management (BLM) officer known as “Dave” was present at briefing with his police dog. When Ms. Benson joined the briefing to introduce herself to “Dave,” Sgt. Empey remarked, “she’s just here for her looks.”

58. This denigrating remark made Ms. Benson feel extremely embarrassed, as it implied that Ms. Benson was a sub-par employee when in fact the opposite was true.

59. In sum, Sgt. Empey’s repeated harassing remarks and conduct based on Ms. Benson’s sex contributed to creating a toxic environment from which Ms. Benson was essentially forced out.

Ms. Benson is Discriminated Against for Not Being Mormon.

60. While working under the supervision of Sgt. Empey, Ms. Benson was subjected to repeated attempts to convert her to the Mormon faith from Sgt. Empey and other officers.

61. As part of his efforts to draw Ms. Benson into his faith Sgt. Empey often called Ms. Benson a “dry Mormon” who “hadn’t been dunked yet,” *i.e.* that she lived a “Mormon lifestyle” but had not been baptized into the church.

///

62. In line with his sexual advances, Sgt. Empey told Ms. Benson that if anything ever happened to her husband that she would become a “Sister wife.”

63. In addition to making conversion attempts, Sgt. Empey regularly mocked Ms. Benson’s Catholic church, calling it the “Taco Bell” church—a reference to the church’s colors and the fact that Catholicism plays a prominent role in Mexican and Latin-American culture.

64. During squad and community events, Sgt. Empey regularly mandated participation in LDS prayers.

65. Sgt. Empey and other LDS Officers regularly told Ms. Benson and Officer Benson that they were “not worthy” because they were not baptized members of the LDS Church. For example, on or about December 4, 2016, Ms. Benson and Officer Benson attended the baptism of a friend’s child at an LDS church. As Ms. Benson and her husband were walking through the church parking lot after the baptism, Sgt. Empey—who was on duty—pulled into the parking lot in his patrol vehicle and asked “What the fuck are you doing here? You’re not members.”

66. In sum, Sgt. Empey’s repeated denigrating remarks and disrespectful conduct based on Ms. Benson’s religion contributed to creating a toxic environment from which Ms. Benson was essentially forced out.

Ms. Benson Serves as a Witness and Sgt. Empey Mounts a Retaliation Campaign.

67. On or about May 8, 2017, Ms. Benson was contacted by Detective Sam Bonner of Metro’s Office of Diversity to be a Witness Employee in an internal investigation pertaining to an Americans with Disabilities Act (ADA) complaint filed against Sgt. Empey by her husband, Officer Benson.

68. Ms. Benson gave this interview on May 18, 2017.

69. During this interview, Ms. Benson disclosed many of the incidents of sexual harassment that form the basis of the instant complaint. Additionally, she expressed her fears that Sgt. Empey would retaliate against her for participating as an Employee Witness.

///

1 70. After Sgt. Empey learned that Ms. Benson gave this interview, his behavior
2 became increasingly threatening and erratic.

3 71. On May 23, 2017, Ms. Benson arrived at the substation to find Sgt. Empey
4 sitting outside the front door, staring at her and scowling, watching her every move.

5 72. On May 24, 2017, Sgt. Empey briefly moved a large file cabinet from its
6 location of five years to directly in front of the rear exit door, blocking it. This “barring the
7 door” made Ms. Benson feel threatened, intimidated, and trapped.

8 73. Beginning on July 19, 2017, Sgt. Empey repeatedly used Ms. Benson’s
9 office printer instead of his own office printer or the communal office printer. While
10 retrieving the printed documents from Ms. Benson’s printer, Sgt. Empey lingered close
11 behind Ms. Benson, intentionally using his large frame to invade her personal space and
12 physically intimidate her, making her extremely uncomfortable and unable to work.

13 74. On or about July 5, 2017, Officer Mark Harding approached Ms. Benson at
14 the substation and told her that he was worried about her. When Ms. Benson asked why,
15 Officer Harding responded that he was worried because Sgt. Empey was “always watching
16 you.” Officer Harding expressed his concern about Sgt. Empey’s actions and warned Ms.
17 Benson to be careful.

18 75. On or about January 2, 2018, when Ms. Benson was returning from holiday
19 leave, Sgt. Empey entered her office to ask her about updating the substation’s officers’ stat
20 sheet. As soon as Sgt. Empey entered Ms. Benson’s office, Officer Cory Estes (“Officer
21 Estes”) got up from his desk and silently stood in Ms. Benson’s office door with his arms
22 crossed, blocking it. Both Sgt. Empey and Officer Estes are large men and are both over six
23 feet tall.

24 76. Ms. Benson interpreted this as Officer Estes intimidating her as retaliation
25 for her serving as an employee witness and having an open EDS complaint against his friend,
26 Sgt. Empey.

27 ///

28 ///

1 77. Upon information and belief, Metro's Office of Diversity sustained Officer
2 Benson's allegation that Sgt. Empey discriminated against him and issued Sgt. Empey a
3 contact report.

4 78. Upon information and belief, Sgt. Empey received no discipline for this
5 misconduct other than a contact report.

6 79. On or about September 20, 2017, Ms. Benson was contacted by Detective
7 David Goris ("Det. Goris") of Metro's Internal Affairs Bureau ("IAB") to be a Witness
8 Employee in an internal investigation pertaining to allegations made by Officer Shanan Kelly
9 ("Officer Kelly") that Sgt. Empey was stern, condescending, and made unjustifiable demands
10 of Officer Kelly during an August 8, 2017 meeting.

11 80. Ms. Benson gave this interview on September 26, 2017.

12 81. Sgt. Empey made no secret of his disapproval of Ms. Benson's participation
13 in the interview. For instance, on October 19, 2017, Sgt. Empey abruptly changed his
14 procedure for handling traffic citations, instructing Ms. Benson to give them to him for
15 paperwork instead of completing the paperwork herself. When Ms. Benson asked why the
16 procedure had changed, Sgt. Empey stated "Yeah, well that was when there was trust in this
17 office and with everything going on there is no trust."

18 82. In the months following this interview, employees at the Overton substation
19 began a campaign of "freezing out" Ms. Benson, not only preventing Ms. Benson from
20 performing her duties but imperiling the safety of civilians.

21 83. One such incident occurred on October 23, 2017. A local citizen called the
22 Overton substation and reported to Ms. Benson that her son was at her house when he should
23 not be.

24 84. Prior to Ms. Benson being an employee witness, non-urgent calls such as
25 this one would result in Ms. Benson contacting an Overton substation officer via cell phone,
26 whereupon he would investigate the situation.

27 ///

28 ///

1 85. Upon information and belief, prior to Ms. Benson being an employee
2 witness, Sgt. Empey had advised officers numerous times to always answer Ms. Benson's
3 phone calls.

4 86. In this instance, however, Ms. Benson called Officer Estes three times, all
5 of which were ignored. Ms. Benson then called Officer Nathan Boss ("Officer Boss") three
6 times, all of which were ignored.

7 87. By the time Officer Boss replied to Ms. Benson, the situation at the citizen's
8 home became urgent, forcing Ms. Benson to dial 911 and forward the citizen to dispatch.

9 88. The next day, October 24, 2017, Ms. Benson attempted to discuss the events
10 of October 23, 2017 with Sgt. Empey. Sgt. Empey responded with hostility and admitted to
11 ignoring her calls, animatedly telling Ms. Benson that sometimes when she calls him in the
12 field, he would see it was her and think, "I'll deal with this later and end the call."

13 89. When Ms. Benson replied that past policy mandate that officers answer their
14 phones and asked whether she should call Overton substation officers in case she has an
15 emergency at work. Sgt. Empey callously replied, "that's what you have a panic button for."

16 90. On November 1, 2017, during briefing regarding police statistics, Sgt.
17 Empey noted that increased scrutiny of stats was not his fault, and that he was "not the one
18 that created all these issues ... when you work in an area like this small unit some
19 personalities are going to clash that's where we're at." Ms. Benson interpreted this remark
20 as singling her and her husband out for filing complaints against him.

21 91. On November 8, 2017, Sgt. Empey intentionally made Ms. Benson's work
22 more difficult than necessary. Specifically, while she was performing timed training at
23 approximately 4:00 p.m., Sgt. Empey requested that Ms. Benson compile a list of all the
24 houses of worship in the substation's jurisdiction by the next day. Ms. Benson stayed late to
25 complete this assignment. The next day, Ms. Benson was forwarded an email indicating that
26 Sgt. Empey received notice On November 7, 2017 that he needed such a list by November
27 9, 2017, but intentionally waited until the last possible moment—right before Ms. Benson
28 was about to leave the office—to ask Ms. Benson to compile said list.

1 92. On November 9, 2017, Sgt. Empey displayed more intimidating “stalking”
2 behaviors toward Ms. Benson, specifically waiting in his vehicle for Ms. Benson near the
3 rear exit. When Ms. Benson, frightened for her safety, exited via the front door, Sgt. Empey
4 responded by driving around the building in an aggressive and unsafe manner to pass by Ms.
5 Benson and glare at her as she drove out of the parking lot.

6 93. On November 15, 2017, Sgt. Empey handed Ms. Benson her annual
7 evaluation. This evaluation was almost verbatim the same as her previous year’s evaluation,
8 however Sgt. Empey had removed several positive comments that were previously included.
9 Furthermore, Sgt. Empey falsely claimed he “had to” remind Ms. Benson about completing
10 training and failed to state that Ms. Benson completed nine additional training courses on her
11 own initiative, without any directive.

12 94. Upon information and belief, this was the first time in her career at Metro
13 that Ms. Benson had ever received a negative annual evaluation.

14 95. Beginning on November 21, 2017, Sgt. Empey and his most trusted officers,
15 Officers Boss and Estes, would intentionally whisper to each other when around Ms. Benson,
16 indicating their lack of trust, and intentionally making it more difficult for Ms. Benson to
17 perform her duties. Notably, when Sgt. Empey was not in the office, Officers Boss and Estes
18 spoke at a normal volume.

19 96. That same day, on November 21, 2017, Ms. Benson received a callout
20 payment request from Officer Boss for a prisoner transport. Ms. Benson processed this
21 callout for payroll in the same manner she had for the previous 15 years, and informed Officer
22 Boss that there were discrepancies and errors in the documents he had submitted. This
23 resulted in Sgt. Empey, Officer Boss, and Officer Estes leaving the room and conferring with
24 each other in private, intentionally excluding Ms. Benson. Sgt. Empey did not provide any
25 further direction regarding the callout.

26 97. The stress of this incident caused Ms. Benson to suffer a migraine headache
27 and leave the office that day.

28 ///

1 98. On November 23, 2017, Ms. Benson received a rude, condescending email
2 from Sgt. Empey—carbon copied to Lt. Stuart—chastising her for pointing out the
3 discrepancies in Officer Boss’s callout, and that she was “doing something outside of her
4 normal scope,” even though she had routinely performed payroll and callout processing
5 duties for the previous 15 years.

6 99. On December 5, 2017, Ms. Benson sent a text message to Sgt. Empey
7 informing him that she would be out pursuant to FMLA for migraine headaches. In stark
8 contrast with the quick responses she had received in the past 10 years of working with Sgt.
9 Empey, Ms. Benson got no response. Forty minutes later, she sent another text to Sgt. Empey,
10 to which he did not respond. Approximately two hours later, Ms. Benson checked her unit’s
11 google calendar and observed that her requested leave had already been entered into the
12 calendar by Sgt. Empey. This evidences that Sgt. Empey intentionally made Ms. Benson’s
13 job more stressful and difficult by failing to inform her whether he had decided to approve
14 her leave.

15 100. On December 11, 2017, Ms. Benson completed an occupational injury
16 report and placed it in Sgt. Empey’s box for signatures. Sgt. Empey did not come to the
17 substation on that day to sign any forms, so Ms. Benson emailed him on December 12, 2017,
18 as she did not want to violate policy by not notifying her Sergeant of an injury, and also
19 needed to fax the form to Health & Safety Detail as soon as possible. Later that day, after
20 some delay, Sgt. Empey signed the form.

21 101. Notably, under question #36 of the form—“is there any reason to doubt the
22 validity of the claim?”—Sgt. Empey checked neither the “yes” nor the “no” box, but wrote
23 “Unk,” presumably short for “unknown,” instead.

24 102. This was in stark contrast with the many times in the past—before he had
25 any reason to retaliate against Ms. Benson—that Sgt. Empey simply checked the “no” box.

26 103. Sgt. Empey did not have any reason to doubt the validity of the claim—if
27 he did, he could have checked the “yes” box. Instead, he deliberately elided the question in
28 a manner that he knew would be an affront to Ms. Benson—a message that he did not trust

1 her—without having to outright perjure himself on the form.

2 104. On December 14, 2017, Ms. Benson attended the annual court Christmas
3 party that Metro employees have attended every year for several years. Before attending, Ms.
4 Benson texted Sgt. Empey to ask if it would be the “normal way”—*i.e.* whether everyone
5 would go home after the party instead of returning to the office.

6 105. Instead of continuing to allow Ms. Benson to go home after the party—as
7 he did in years past, before he had any reason to retaliate against her—Sgt. Empey responded
8 with “back to the office.” Ms. Benson obeyed that command and returned to the office after
9 the Christmas party.

10 106. On December 18, 2017, Sgt. Empey visited the substation in plain clothes,
11 as he was on vacation. While there for a half-hour, Sgt. Empey simply ignored Ms. Benson,
12 literally acting as if she did not exist. Thus, even while on vacation, Sgt. Empey went out of
13 his way to display hostility and resentment toward Ms. Benson.

14 107. These actions, taken together, constitute a campaign of retaliation that
15 simply did not exist until Ms. Benson testified against Sgt. Empey.

16 ***Sgt. Empey Invades Ms. Benson’s Privacy After Auto Accident.***

17 108. While on scheduled vacation on December 23, 2017, Ms. Benson was
18 involved in a serious automobile accident that took place on State Route 169 in Clark County.

19 109. The incident was under the jurisdiction of the Nevada Highway Patrol and
20 was investigated by the Nevada Highway Patrol.

21 110. As a result of injuries and acute hypertension caused by the crash, Ms.
22 Benson was placed in an ambulance.

23 111. While in the ambulance, Ms. Benson observed that Sgt. Empey had arrived
24 at the scene in his personal vehicle, despite being on vacation. Given the recent and growing
25 tension between them, Ms. Benson did not want to see Sgt. Empey, as the stress involved
26 would further increase her blood pressure and be dangerous to her health.

27 112. Ms. Benson instructed medical staff not to let Sgt. Empey in the ambulance.

28 ///

1 113. As a result of speaking with NHP Officers and Officer Benson, Sgt. Empey
2 learned about Ms. Benson's medical condition.

3 114. Despite the fact that he knew or should have known that he was
4 inappropriately and unlawfully intruding on his employee's medical care, and despite not
5 having any permission to do so, Sgt. Empey opened the ambulance's back door and entered
6 it.

7 115. This intrusion made Ms. Benson feel extremely intimidated and
8 uncomfortable.

9 116. While in the ambulance against Ms. Benson's wishes, Sgt. Empey said,
10 within earshot of paramedics and Officer Benson, "are those your carpal tunnel wrists?" This
11 was in reference to a workers' compensation claim filed by Ms. Benson on December 11,
12 2017.

13 117. Upon information and belief, Sgt. Empey is forbidden from disclosing Ms.
14 Benson's private medical information pursuant to, *inter alia*, Metro policy.

15 ***The Retaliation Continues After Ms. Benson Returns to Work.***

16 118. When Ms. Benson returned to work on January 2, 2018, the intimidation
17 continued. When Sgt. Empey went to Ms. Benson's office to give her a list of handwritten
18 changes he wanted made to officers' files, Officer Estes got up from his desk and silently
19 stood in the doorway of Ms. Benson's office, crossing his arms and glowering at Ms. Benson
20 as he blocked the doorway.

21 119. Ms. Benson believes this to be form of intimidation, as Officer Estes (who,
22 like Sgt. Empey, is large man) had no information to convey or any other reason to be there,
23 watching the interaction between Ms. Benson and Sgt. Empey.

24 120. On January 16, 2018, Ms. Benson received an email from Sgt. Empey—
25 carbon copied to Lt. Stuart—which abruptly pointed out a minor discrepancy in a leave slip
26 Ms. Benson submitted for illness on January 11, 2018. Specifically, Sgt. Empey claim that
27 her leave should have been for 7 hours instead of 6 hours because according to payroll, Ms.
28 Benson works 10-hour shifts from 7 am to 5 pm.

1 121. For the seven to eight years prior to this incident, pursuant to the customs
2 that had been established for years at the substation under Sgt. Empey's supervision, Ms.
3 Benson worked continuously from 7 am to 4 pm, and "saved" her 1-hour lunch break for the
4 end of her shift, thereby working a full shift despite leaving at 4 pm.

5 122. Sgt. Empey knew that Ms. Benson's—and the substation's—standard
6 practice was for Ms. Benson to "save" her lunch break for the end of her shift, and therefore
7 for the purposes of reporting personal leave, calculate the hours as if her shift ended at 4 pm,
8 not 5 pm as Metro payroll technically reflects.

9 123. Before Sgt. Empey had any reason to retaliate against Ms. Benson, he
10 routinely abided by this arrangement created for the convenience of Metro employees and
11 citizens alike. Afterward, as reflected by this incident and others, Sgt. Empey would seize
12 upon any pretext to penalize and intimidate Ms. Benson, even down to forcing her to cede
13 an extra hour of her leave time that she was entitled to.

14 124. In the last few months before Ms. Benson was forced to resign, Sgt. Empey
15 intentionally isolated Ms. Benson by restricting officers from interacting with Ms. Benson.
16 During that same time period, Sgt. Empey further isolated Ms. Benson by holding the
17 substation's weekly briefings at an offsite location rather than the substation.

18 ***Ms. Benson Unsuccessfully Attempts to Seek Internal Remedies from Metro.***

19 125. On October 19, 2017, Detective Sam Diaz ("Det. Diaz") of the Employment
20 Diversity Section ("EDS") of Metro's Internal Affairs Bureau ("IAB") contacted Ms. Benson
21 asking if she wanted to file a report against Sgt. Empey. Ms. Benson replied that she needed
22 to contact her union representative first and expressed her fears that Sgt. Empey would
23 retaliate against her if she filed a report. Ms. Benson also reported that Sgt. Empey was
24 already targeting her for disparate treatment by being rude and nasty to her, in retaliation for
25 her being a witness against him.

26 126. On October 24, 2017, Ms. Benson again explained to Det. Diaz that she was
27 scared to file a claim due to the retaliation that she would go through as well as the retaliation
28 she was currently going through.

1 127. On November 1, 2017, Ms. Benson was interviewed by Det. Diaz regarding
2 her allegations about Sgt. Empey's behavior at work.

3 128. On December 4, 6, and 8, 2017, Ms. Benson contacted her Police Protective
4 Association Civilian Employees ("PPACE") union representative, Michael, via phone and
5 email, forwarding him Sgt. Empey's abusive emails and detailing how his retaliatory
6 behavior was causing her immense stress and negatively affecting her health.

7 129. On December 19, 2017, Ms. Benson had a telephone conversation with Det.
8 Diaz regarding her ongoing disparate treatment from Sgt. Empey. During this call, Ms.
9 Benson broke down crying while recalling the abuse she had suffered at the hands of Sgt.
10 Empey and his most loyal subordinates, Officers Estes and Boss.

11 130. On February 14, 2018, Ms. Benson received a letter from Captain Roxanne
12 Burke, on behalf of Sheriff Joseph Lombardo, informing her that EDS had completed its
13 investigation of her complaint and was administratively closing its file in this matter, as EDS
14 could not prove or disprove Ms. Benson's allegation of a violation of policy and/or federal
15 law.

16 131. Essentially, this letter meant that no disciplinary action would be taken
17 against Sgt. Empey, despite his manifest discrimination and retaliation against Ms. Benson.

18 ***Ms. Benson is Constructively Discharged.***

19 132. Eventually, the stress of being the target of gender-based and religion-based
20 harassment, ostracization, and retaliation became unbearable for Ms. Benson.

21 133. Because Metro had displayed its unwillingness to enforce its own anti-
22 discrimination and harassment policies, Ms. Benson was forced to make the decision to
23 resign from her job at Metro.

24 134. On March 2, 2018, Ms. Benson submitted her medical retirement
25 paperwork—with the exception of the supervisor page—to the Public Employees'
26 Retirement System of Nevada ("PERS").

27 135. Ms. Benson did not include the supervisor page in fear of being the target
28 of more retaliatory and discriminatory behavior from Sgt. Empey.

1 ***Sgt. Empey Intimidates Ms. Benson After Her Constructive Discharge***

2 136. Since Ms. Benson's constructive discharge from Metro, Sgt. Empey has
3 continued to engage in bizarre and intimidating behavior designed to harass Ms. Benson, and
4 on information and belief, has directed others working under his supervision to likewise
5 engage in bizarre and intimidating behavior designed to harass Ms. Benson

6 137. These behaviors have invaded Ms. Benson's privacy.

7 138. These behaviors have caused Ms. Benson to fear engaging in everyday
8 activities such as driving or shopping.

9 139. Upon information and belief, on at least seven occasions between August
10 2018 and January 2019, Ms. Benson observed Sgt. Empey intentionally following her as she
11 was driving through the Overton/Logandale area.

12 140. In February 2019, Ms. Benson encountered Sgt. Empey at a grocery store
13 in Overton, Nevada where she was shopping with her husband. During that encounter, Sgt.
14 Empey intentionally placed himself in close proximity to Ms. Benson and her husband and
15 stared at her with an angry expression without speaking.

16 141. Additionally, on information and belief, on two occasions since her
17 constructive discharge, including but not limited to on or about March 2, 2019, Ms. Benson
18 has encountered Sgt. Empey while at a local gas station. On both occasions, Sgt. Empey
19 intentionally placed himself in close proximity to Ms. Benson where he had no reason to be,
20 stopped, attempted to block her movement, and stared at her with an angry expression
21 without speaking.

22 142. Additionally, on or about May 4, 2018, Ms. Benson and her husband were
23 returning home from having dinner when they encountered a man waiting on their property.

24 143. The man informed Ms. Benson and her husband that he was starting a new
25 pest control business and had been told by Officer Nathan Boss—an officer with Metro and
26 a crony of Sgt. Empey—that the Bensons needed an exterminator.

27 ///

28 ///

1 144. Upon information and belief, Officer Boss sent the pest control service to
2 Ms. Benson's residence to send the Bensons a message that they are "pests" and need to be
3 exterminated.

4 145. Upon information and belief, Officer Boss was acting under the direction of
5 Sgt. Empey and/or with the tacit approval of Sgt. Empey.

6 146. Additionally, on December 9, 2019, Ms. Benson and her husband went to
7 the Logandale post office. When they arrived at the post office, they encountered Metro
8 Officer Chris Khoentopp, an officer with whom the Bensons are friends. While Ms. Benson
9 waited in the car, Mr. Benson got out to have a conversation with Officer Khoentopp in front
10 of the post office.

11 147. While Mr. Benson was speaking with Officer Khoentopp, Officer Otto
12 Foster—another of Sgt. Empey's cronies—pulled into the post office parking lot in his off-
13 duty personal vehicle.

14 148. When Officer Foster exited his vehicle and began walking past Officer
15 Khoentopp and the Bensons and into the post office, Officer Foster called Mr. Benson a
16 "piece of shit" and flipped him off.

17 149. Upon information and belief, Officer Foster engaged in this intimidating
18 and offensive behavior with the tacit approval of Sgt. Empey and/or at his direction.

19 150. On information and belief, Sgt. Empey, Officer Boss, and Officer Foster
20 have engaged in this conduct to intimidate, harass, and punish Ms. Benson.

21 151. On information and belief, Sgt. Empey and Officer Boss have engaged in
22 this conduct to get Ms. Benson and her husband to leave the Overton/Logandale area, which
23 Sgt. Empey thinks he controls due to his position with Metro and the isolated nature of the
24 substation at which Sgt. Empey is the highest-ranked Metro employee.

25 152. As a result of these incidents, Ms. Benson has become afraid of engaging in
26 everyday activities. Ms. Benson has refrained and continues to refrain from driving,
27 shopping, or dining in or around the Overton/Logandale area to prevent being followed by
28 Sgt. Empey or otherwise being subjected to invasive, intimidating behavior by Sgt. Empey

1 or others acting on his behalf or with his tacit or explicit approval.

2 153. As a result of these incidents, and to further avoid any contact with Sgt.
3 Empey or other Substation officers, Ms. Benson has also ceased engaging in recreational
4 activities that she used to enjoy such as hiking, riding all-terrain vehicles, and walking her
5 dogs.

6 154. Additionally, this pattern of invasive and intimidating conduct by Sgt.
7 Empey and other Metro officers acting on his behalf or with his tacit or explicit approval has
8 caused Ms. Benson and her husband to consider selling the home they custom built in 2016
9 and moving out of the community they have called home for approximately seventeen years.

10 ***The Economic and Emotional Toll of Ms. Benson's Constructive Discharge***

11 155. Upon information and belief, pursuant to PERS policy, after 30 years of
12 employment with the State of Nevada, state employees are entitled to the maximum amount
13 of pension income and benefits

14 156. Ms. Benson intended on working for the full 30 years as a LEST with Metro.

15 157. However, due to her constructive discharge, Ms. Benson was only able to
16 work 20 years.

17 158. As a result of her constructive discharge, Ms. Benson has lost both the salary
18 she would have otherwise made over the next decade, as well as the difference between the
19 lifetime PERS pension and benefits she currently entitled to and the maximum lifetime PERS
20 pension she would have been entitled to but for her constructive discharge from Metro.

21 159. Upon information and belief, the medical coverage Ms. Benson was entitled
22 to as a Metro employee (and prospectively, as a maximum-level PERS pensioner) is
23 significantly less expensive than private health care plans of similar quality.

24 160. As a result of her constructive discharge, Ms. Benson has been forced to
25 obtain significantly more expensive health care coverage for herself and her family.

26 161. In addition to economic losses, Ms. Benson suffered severe emotional
27 distress, including depression and anxiety, from being forced to resign from Metro.

28 ///

CAUSES OF ACTION

FIRST CAUSE OF ACTION

DISCRIMINATION BASED ON GENDER AND RELIGION

PURSUANT TO 42 U.S.C. § 2000E AND NEV. REV. STAT. § 613.330
(AGAINST DEFENDANT METRO)

162. Ms. Benson repeats and realleges Paragraphs 1 through 161 as though fully set forth herein

163. As an employee of Metro, Ms. Benson is a person entitled to protection under federal and Nevada anti-discrimination statutes, respectively codified at 42 U.S.C. § 2000e *et. seq.* (“Title VII”), and Nev. Rev. Stat. § 613.330 *et. seq.*

164. Metro had a legal obligation, pursuant to the aforementioned statutes and its own internal policies, to maintain a workplace free of unlawful discrimination.

165. Title VII and Nev. Rev. Stat. § 613.330 *et. seq.* prohibit Metro from discriminating against an employee on the basis of that employee’s gender and/or religion.

166. Despite these federal and state statutes, Metro has subjected Ms. Benson to different terms and conditions of employment because of her sex (female) and religion (Catholic).

167. Ms. Benson belongs to a protected class under Title VII and Nev. Rev. Stat. § 613.330 by virtue of her sex and religion.

168. At all times during her employment, Ms. Benson performed her job more than satisfactorily, as evidenced by consistently receiving positive feedback on her evaluations throughout her tenure at Metro.

169. Metro’s discriminatory and disparate treatment of Ms. Benson based on her gender includes but is not limited to the following: unwelcomed oral and written comments about her physical appearance, leering at her body, Sgt. Empey touching his genitals while talking to her, and Sgt. Empey making unwelcomed comments about her physical appearance to other officers, including her husband. Ms. Benson was treated differently than similarly situated employees who do not belong to the same protected class. Upon information and belief, Sgt. Empey does not expose his male colleagues to unsolicited opinions on their looks,

1 unwanted sexual advances, or invasions of their personal space.

2 170. Metro's discriminatory and disparate treatment of Ms. Benson based on her
3 religion (Catholic) includes but is not limited to the following: repeated comments about her
4 not being LDS, comments regarding her perceived "unworthiness" because she is not LDS,
5 being forced to participate in LDS prayers during squad and community events, comments
6 by Sgt. Empey regarding becoming a "sister wife," and referring to Ms. Benson's Catholic
7 Church as the "Taco Bell" church.

8 171. Ms. Benson suffered adverse employment actions which materially affected
9 her compensation, terms, conditions and/or privileges of employment, including but not
10 limited to the following: being subjected to unwanted and unwelcomed comments regarding
11 her physical appearance, unwanted and unwelcomed comments about her religion, and being
12 forced to participate in LDS prayers.

13 172. As a direct and proximate cause of Metro's violation of Ms. Benson's rights
14 under Title VII and Nev. Rev. Stat. § 613.330, Ms. Benson suffered damages subject to an
15 amount to be proved at trial, including but not limited to: lost current and future PERS
16 pension income and benefits, current and future lost vacation and sick time, current and
17 future lost medical insurance benefits, and lost income such as her salary and raises she
18 would have received but-for being constructively discharged from Metro.

19 173. Ms. Benson is entitled to punitive damages from Metro to deter Metro from
20 shirking its responsibility to maintain a discrimination-free workplace for its employees.

21 174. It has been necessary for Ms. Benson to retain the services of attorneys and
22 therefore, pursuant to 42 U.S.C. § 2000e-5(k), she is entitled to recover reasonable costs and
23 attorney's fees.

24 **SECOND CAUSE OF ACTION**
25 **HOSTILE WORK ENVIRONMENT BASED ON GENDER AND RELIGION**
26 **PURSUANT TO 42 U.S.C. § 2000E AND NEV. REV. STAT. § 613.330**
(AGAINST DEFENDANT METRO)

27 175. Ms. Benson repeats and realleges Paragraphs 1 through 174 as though fully
28 set forth herein.

1 176. Ms. Benson has the right to work in an environment free from gender-based
2 or religion-based harassment.

3 177. Sgt. Empey subjected Ms. Benson to repeated verbal and physical conduct
4 because she is a woman, including but not limited to the following: unwelcomed oral and
5 written comments about her physical appearance, leering at her body, touching his genitals
6 while talking to her, and making unwelcomed comments about her physical appearance to
7 other officers, including her husband.

8 178. Ms. Benson was also subjected to repeated verbal conduct because she is a
9 Catholic, including comments on her not being LDS, comments on her perceived
10 “unworthiness” because she is not LDS, mandatory participation in LDS prayers during
11 squad and community events, Sgt. Empey commenting on his desire to make Ms. Benson a
12 “sister wife,” and Sgt. Empey referring to Ms. Benson’s Catholic Church as the “Taco Bell”
13 church.

14 179. Sgt. Empey’s conduct toward Ms. Benson was unwelcome.

15 180. Sgt. Empey’s conduct was sufficiently severe and/or pervasive to alter the
16 conditions of Ms. Benson’s employment and create an abusive working environment.

17 181. As a direct and proximate cause of Metro’s violation of Ms. Benson’s rights
18 under Title VII and Nev. Rev. Stat. § 613.330, Ms. Benson suffered damages subject to an
19 amount to be proved at trial.

20 182. Ms. Benson is entitled to punitive damages from Metro to deter Metro from
21 shirking its responsibility to maintain a non-hostile work environment for its employees.

22 183. It has been necessary for Ms. Benson to retain the services of attorneys and
23 therefore, pursuant to 42 U.S.C. § 2000e-5(k), she is entitled to recover reasonable costs and
24 attorney’s fees.

25 ///

26 ///

27 ///

28 ///

THIRD CAUSE OF ACTION
WRONGFUL TERMINATION BASED ON GENDER AND RELIGION
PURSUANT TO 42 U.S.C. § 2000E AND NEV. REV. STAT. § 613.330
(AGAINST DEFENDANT METRO)

184. Ms. Benson repeats and realleges Paragraphs 1 through 183 as though fully set forth herein.

185. Ms. Benson's resignation was induced by the actions of Sgt. Empey and workplace conditions that were violative of public policy—specifically, the public policies of not discriminating based on sex or religion, and of not retaliating against employees who engage in protected activities.

186. A reasonable person in Ms. Benson's position at the time of her resignation would have also resigned because of the aggravated and intolerable employment actions and conditions perpetrated by Sgt. Empey.

187. Metro had actual or constructive knowledge of the intolerable actions and conditions and their impact on Ms. Benson, as evidenced by multiple interviews with EDS and IAB detectives in which Ms. Benson and others shared these allegations against Sgt. Empey.

188. The situation could have been remedied in one or several different ways, including but not limited to transferring Sgt. Empey to a different substation or disciplining Sgt. Empey in a sufficient manner to deter him from engaging in such tortious behavior.

189. Upon information and belief, Metro has not imposed any discipline on Sgt. Empey for his inappropriate and unlawful behavior other than a contact report.

190. Due to Metro's unwillingness to remedy Sgt. Empey's abusive behavior, Ms. Benson was left with no choice but to resign from her position, a constructive discharge.

191. As a direct and proximate result of Metro's failure to remedy the toxic workspace Ms. Benson was exposed to, Ms. Benson suffered damages subject to an amount to be proved at trial.

192. Ms. Benson is entitled to punitive damages from Metro to spur Metro into action regarding workplaces in which supervisors abuse their authority, retaliate against their subordinates, and discriminate based on sex and religion.

193. It has been necessary for Ms. Benson to retain the services of attorneys and therefore, pursuant to 42 U.S.C. § 2000e-5(k), she is entitled to recover reasonable costs and attorney's fees.

FOURTH CAUSE OF ACTION
RETALIATION FOR ENGAGING IN PROTECTED ACTIVITY
PURSUANT TO 42 U.S.C. § 2000E AND NEV. REV. STAT. § 613.330
(AGAINST DEFENDANT METRO)

194. Ms. Benson repeats and realleges Paragraphs 1 through 193 as though fully set forth herein.

195. Ms. Benson engaged in several protected activities while employed as a LEST at Metro, specifically serving as an employee witness in multiple internal investigations related to complaints made about Sgt. Empey's behavior.

196. Ms. Benson was subjected to adverse employment action by the employer, specifically harassment at the hands of Sgt. Empey that made working at the Overton substation impossible, culminating in her constructive discharge.

197. Ms. Benson's participation in protected activities was a motivating factor in subjecting Ms. Benson to repeated harassment and ultimately forcing her out of her job.

198. As demonstrated by Sgt. Empey's abrupt change in how he and his colleagues treated Ms. Benson shortly after she engaged in protected activities, there is a causal link between Ms. Benson's protected activities and Metro's retaliatory actions.

199. As a direct and proximate result of Metro's retaliatory actions, Ms. Benson suffered damages subject to an amount to be proved at trial.

200. Ms. Benson is entitled to punitive damages from Metro to deter Metro from retaliating against its employees for exercising their rights.

201. It has been necessary for Ms. Benson to retain the services of attorneys and therefore, pursuant to 42 U.S.C. § 2000e-5(k), she is entitled to recover reasonable costs and attorney's fees.

///

///

FIFTH CAUSE OF ACTION
VIOLATION OF PROCEDURAL DUE PROCESS
PURSUANT TO 42 U.S.C. § 1983
(AGAINST ALL DEFENDANTS)

202. Ms. Benson repeats and realleges Paragraphs 1 through 201 as though fully set forth herein.

203. Ms. Benson has constitutionally protected property interests in her continued employment at Metro, as well as in the pensions and other benefits she would be entitled to as an employee of Metro.

204. By virtue of constructively discharging Ms. Benson, Metro violated those property interests.

205. Metro and its employees acted under color of state law in depriving Ms. Benson of those property interests.

206. The procedures pursuant to which Ms. Benson was constructively discharged were constitutionally insufficient under the Fourteenth Amendment.

207. As a direct result of these unconstitutional violations of Ms. Benson's property rights, Ms. Benson is entitled to damages in an amount to be determined at trial.

208. It has been necessary for Ms. Benson to retain the services of attorneys and therefore, pursuant to 42 U.S.C. § 1988(b), she is entitled to recover reasonable costs and attorney's fees.

SIXTH CAUSE OF ACTION
NEGLIGENT SELECTION, TRAINING, SUPERVISION, AND/OR RETENTION
PURSUANT TO NEV. REV. STAT. § 41.130
(AGAINST DEFENDANT METRO)

209. Ms. Benson repeats and realleges Paragraphs 1 through 208 as though fully set forth herein.

210. Metro had a duty to protect Ms. Benson from harm resulting from its continued employment and non-discipline of Sgt. Empey.

211. Metro breached that duty by failing to ensure that Sgt. Empey was adequately trained, supervised, and disciplined to prevent harassing Ms. Benson based on sex and religion, and prevent retaliation against Ms. Benson for engaging in protected

1 activities.

2 212. As a direct and proximate result of Metro's negligence, Ms. Benson suffered
3 damages in an amount to be determined at trial.

4 **SEVENTH CAUSE OF ACTION**
5 **RIGHT TO PRIVACY - PUBLIC DISCLOSURE OF PRIVATE FACTS**
6 **(AGAINST DEFENDANT SGT. EMPEY)**

7 213. Ms. Benson repeats and realleges Paragraphs 1 through 212 as though fully
8 set forth herein.

9 214. Ms. Benson has a right to not have private facts about her publicly
10 disclosed. *See, e.g., Norman-Bloodsaw v. Lawrence Berkeley Lab.*, 135 F.3d 1260, 1269 (9th
11 Cir. 1998) ("The constitutionally protected privacy interest in avoiding disclosure of
12 personal matters clearly encompasses medical information and its confidentiality. ... One
13 can think of few subject areas more personal and more likely to implicate privacy interests
14 than that of one's health or genetic make-up.")

15 215. Sgt. Empey intentional violated this right when, during the December 23,
16 2017 incident following Ms. Benson's automobile accident, he entered the ambulance where
17 she was receiving medical treatment and publicly disclosed personal, private medical
18 information related to Ms. Benson's worker's compensation claim for carpal tunnel
19 syndrome.

20 216. Sgt. Empey's public disclosure of Ms. Benson's personal, private medical
21 information would be offensive and objectionable to a reasonable person of ordinary
22 sensibilities, because a person who has filed a worker's compensation claim related to a
23 medical condition has a reasonable expectation that information will be kept confidential.

24 217. As a direct and proximate result of Sgt. Empey's public disclosure of private
25 facts about Ms. Benson's medical history, Ms. Benson has suffered damages in an amount
26 to be determined at trial.

27 ///

28 ///

///

EIGHTH CAUSE OF ACTION
RIGHT TO PRIVACY - INVASION OF PRIVACY
(AGAINST DEFENDANT SGT. EMPEY)

218. Ms. Benson repeats and realleges Paragraphs 1 through 217 as though fully set forth herein.

219. Ms. Benson has a reasonable expectation of privacy that her medical information would not be disclosed. Further, Ms. Benson had a reasonable expectation to receive medical treatment in privacy, without the intrusion of her supervisor, Sgt. Empey.

220. Ms. Benson also has a reasonable expectation that she and her family can live in their home without being approached, contacted, or intimidated by Sgt. Empey or others acting on his behalf or at his direction.

221. Ms. Benson's common law rights of privacy are well-founded in Nevada law, including, but not limited to, protection from the tort of intrusion upon a person's solitude or seclusion, the right to be let alone, and protection against the public disclosure of private facts and medical information.

222. Sgt. Empey intentionally intruded upon Ms. Benson's expectation of privacy when he entered the ambulance where Ms. Benson was receiving medical treatment following her December 23, 2017 automobile accident despite Ms. Benson's explicit instructions to medical staff that she did not want Sgt. Empey to enter the ambulance.

223. Sgt. Empey has also intentionally intruded upon Ms. Benson's expectation of privacy by permitting Officer Boss to send a pest control service to Ms. Benson's private residence without her knowledge or consent in an effort to intimidate Ms. Benson and her family.

224. As a direct and proximate result of Sgt. Empey's invasions of Ms. Benson's privacy, Ms. Benson has suffered damages in an amount to be determined at trial.

NINTH CAUSE OF ACTION
RIGHT OF PRIVACY - INTRUSION UPON SECLUSION
(AGAINST DEFENDANT SGT. EMPEY)

225. Ms. Benson repeats and re-alleges Paragraphs 1 through 224 as though fully set forth herein.

1 226. Ms. Benson has a reasonable expectation that her medical information
2 would not be disclosed. Further, Ms. Benson had reasonable expectation to receive medical
3 treatment in privacy, without the intrusion of her supervisor, Sgt. Empey.

4 227. Ms. Benson's common law rights of privacy are well-founded in Nevada
5 law, including, but not limited to, protection from the tort of intrusion upon a person's
6 solitude or seclusion, the right to be let alone, and protection against the public disclosure of
7 private facts and medical information.

8 228. Sgt. Empey intruded on Ms. Benson's right to seclusion when, on December
9 23, 2017, he entered the ambulance where Ms. Benson was receiving medical treatment,
10 even after Ms. Benson had instructed the ambulance medical staff to not let Sgt. Empey enter
11 the ambulance.

12 229. Sgt. Empey has also intruded on and continues to intrude upon Ms.
13 Benson's right to seclusion by repeatedly following her as she drives in and around the
14 Overton/Logandale area conducting her personal business.

15 230. Sgt. Empey has also intruded on Ms. Benson's right to seclusion by
16 permitting an officer under his supervision to send a pest control service to Ms. Benson's
17 private residence.

18 231. As a direct and proximate result of Sgt. Empey's intrusion upon her
19 seclusion, Ms. Benson has suffered damages in an amount to be determined at trial.

20 **TENTH CAUSE OF ACTION**
21 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
22 **(AGAINST DEFENDANT SGT. EMPEY)**

23 232. Ms. Benson repeats and re-alleges Paragraphs 1 through 231 as though fully
24 set forth herein.

25 233. Sgt. Empey intentionally or recklessly caused Ms. Benson to suffer severe
26 emotional distress, as evidenced by his outrageous and unreasonable conduct of following
27 her as she drives around the Logandale/Overton area and engaging in intimidating behaviors
28 such as approaching Ms. Benson in a local gas station and staring at her without speaking.

 234. Sgt. Empey's extreme and outrageous conduct has caused and continues to

1 cause Ms. Benson to be afraid of engaging in everyday activities such as driving around her
2 community, shopping, and enjoying recreational activities.

3 235. Sgt. Empey has conducted and continues to conduct himself with
4 intentional or reckless disregard for inflicting emotional distress on Ms. Benson.

5 236. As a result of Sgt. Empey's extreme and outrageous conduct, Ms. Benson
6 has suffered, is suffering, and will continue to suffer damages in an amount subject to be
7 determined at trial, and Ms. Benson is entitled to: declaratory relief against Sgt. Empey,
8 attorney's fees and costs from Sgt. Empey, and monetary, compensatory, and punitive
9 damages from Sgt. Empey.

10 **ELEVENTH CAUSE OF ACTION**
11 **FIRST AMENDMENT RETALIATION**
12 **PURSUANT TO 42 U.S.C. § 1983**
(AGAINST DEFENDANT SGT. EMPEY)

13 237. Ms. Benson repeats and re-alleges Paragraphs 1 through 236 as though fully
14 set forth herein.

15 238. The First Amendment to the United States Constitution shields public
16 employees from employment retaliation for their protected speech activities.

17 239. Ms. Benson engaged in protected speech activities when she testified on
18 May 18, 2017 as a witness in an internal investigation pertaining to an ADA complaint her
19 husband, Troy Benson, filed against Sgt. Empey.

20 240. Ms. Benson was not acting within the scope of her official duties as a public
21 employee when she testified as a witness in the internal investigation regarding Mr. Benson's
22 ADA complaint against Sgt. Empey.

23 241. Discrimination against persons with disabilities is a matter of public
24 concern.

25 242. Ms. Benson engaged in protected speech activities when she testified on
26 September 26, 2017 as a witness in an internal investigation pertaining to allegations made
27 by Officer Shannan Kelly that Sgt. Empey was stern, condescending, and made unreasonable
28 demands of him during an August 8, 2017 meeting.

243. Ms. Benson was not acting within the scope of her official duties as a public employee when she testified as a witness in the internal investigation regarding Officer Kelly's allegations against Sgt. Empey.

244. Potential misconduct by government officials is a matter of public concern.

245. Sgt. Empey subjected Ms. Benson to adverse employment action, including but not limited to changing procedures for handling traffic citations, giving Ms. Benson a negative performance evaluation, subjecting her to stalking and harassing behaviors, intentionally limiting officers' interactions with Ms. Benson, and failing to inform Ms. Benson whether he would approve requested medical leave.

246. Upon information and belief, the adverse employment actions Sgt. Empey took against Ms. Benson were motivated by her protected speech as a witness in Metro's investigations of Mr. Benson's and Officer Kelly's complaints against Sgt. Empey.

247. As a direct result of Sgt. Empey's violation of Ms. Benson's First Amendment rights, Ms. Benson is entitled to damages in an amount to be determined at trial.

248. It has been necessary for Ms. Benson to retain the services of attorneys and therefore, pursuant to 42 U.S.C. § 1988(b), she is entitled to recover reasonable costs and attorney's fees.

TWELFTH CAUSE OF ACTION
FIRST AMENDMENT RETALIATION
PURSUANT TO 42 U.S.C. § 1983
(AGAINST DEFENDANT SGT. EMPEY)

249. Ms. Benson repeats and re-alleges Paragraphs 1 through 248 as though fully set forth herein.

250. The First Amendment to the United States Constitution prohibits government officials from subjecting an individual to retaliatory actions for speaking out about a matter of public concern.

251. On May 17, 2018, Ms. Benson engaged in protected speech activity when she filed a charge of discrimination based on sex and religion, as well as retaliation with the EEOC.

1 252. Upon information and belief, Sgt. Empey is aware that Ms. Benson filed a
2 charge of discrimination with the EEOC.

3 253. Upon information and belief, Sgt. Empey has engaged in a campaign of
4 retaliation against Ms. Benson for filing a charge of discrimination with the EEOC, including
5 but not limited to sending a pest control service to her residence, following her as she drives
6 through the Overton/Logandale area, and intentionally placing himself in close proximity to
7 Ms. Benson and staring at her without speaking staring at her when he has encountered her
8 in stores in the Logandale/Overton area.

9 254. Sgt. Empey's bizarre and intimidating actions would chill or silence a
10 person of ordinary firmness from future First Amendment activities.

11 255. As a direct result of Sgt. Empey's violation of Ms. Benson's First
12 Amendment rights, Ms. Benson is entitled to damages in an amount to be determined at trial.

13 256. It has been necessary for Ms. Benson to retain the services of attorneys and
14 therefore, pursuant to 42 U.S.C. § 1988(b), she is entitled to recover reasonable costs and
15 attorney's fees.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Ms. Benson respectfully prays as follows:

- 18 a. A trial by jury;
- 19 b. A declaration that the acts and practices of Defendants are violations of state
20 and federal laws prohibiting discrimination and retaliation;
- 21 c. An award to Plaintiff Mary Benson in an amount equal to the wages, salary,
22 and benefits which she would have earned but for the discriminatory and retaliatory treatment
23 she was subjected to and making her whole for all economic losses suffered;
- 24 d. An award requiring all Defendants to pay compensatory damages in an
25 amount to be determined at trial;
- 26 e. An award against the individual Defendants for punitive damages in an
27 amount to be determined at trial sufficient to punish Defendants and deter them from
28 engaging in this unlawful conduct;

1 f. An award of an additional amount to account for any tax liability she may
2 incur in relation to awards made herein;

3 g. For prejudgment interest as allowed by law;

4 h. For injunctive relief as detailed above, including restoration of the benefits
5 to which she would be entitled had she not been constructively discharged from her position
6 and instituting effective discrimination and retaliation prevention measures;

7 i. An award of attorney's fees and costs under 42 U.S.C. § 1988(b) and 42
8 U.S.C. § 2000e-6(k); and

9 j. Any further relief the Court deems appropriate.

10
11 DATED this 5th day of March, 2020.

12
13 /s/ Margaret A. McLetchie

14 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

15 ALINA M. SHELL, Nevada Bar No. 11711

16 MCLEATCHIE LAW

17 701 East Bridger Avenue, Suite 520

18 Las Vegas, NV 89101

19 Telephone: (702) 728-5300

20 Email: maggie@nvlitigation.com

21 *Counsel for Plaintiff Mary Benson*

CERTIFICATE OF SERVICE

I hereby certify that on this the 5th day of March, 2020, I did serve, via Case Management/Electronic Case Filing, a true and correct copy of the above and foregoing FIRST AMENDED COMPLAINT addressed to the following:

Nick D. Crosby
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
Email: ncrosby@maclaw.com
Attorney for LVMPD Defendants

/s/ Pharan Burchfield
EMPLOYEE of McLetchie Law